

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 107 OF 2014S

STATE

vs

LAIASIA NINO RAVUDI

Counsels : Mr. Y. Prasad and Ms. S. Serukai for State
Ms. T. Kean for Accused
Hearings : 27 and 28 April, 2016'
Summing Up : 2 May, 2016
Judgment : 3 May, 2016

JUDGMENT

1. On 27 April 2016, in the presence of his counsel, the accused pleaded not guilty to the following information:

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree
No. 44 of 2009.

Particulars of Offence

LAIASIA NINO RAVUDI on the 8th day of March 2014, at Nakorovou
Village, Rewa in the Central Division, had carnal knowledge of E. V,
without her consent.

2. The trial before myself and three assessors commenced. The prosecution called six witnesses. A prima facie case was found against the accused. He was called upon to make his defence. He gave sworn evidence and called no witness.
3. Assessor No. 3 failed to turn up on time when it was time to deliver the summing up at 2.15 pm yesterday. With the consent of both parties, the summing up was delivered in the presence of Assessor No. 1 and 2.
4. After the summing up yesterday, the two assessors retired to deliberate. They later returned with a not guilty opinion for the accused. Obviously, they did not accept the prosecution's version of events.
5. Assessors are there to assist the trial judge come to a decision on the guilt or otherwise of the accused. I have heard the complainant's evidence. On oath, she said, the accused penetrated her vagina on 8 March 2014 without her consent, and he knew she was not consenting to sex with him, at the time.
6. I have also heard the accused's sworn evidence that he did not insert his penis into the complainant's vagina, at the material time.
7. I have reviewed the evidence called in the trial, and I have directed myself in accordance with the summing up I gave the assessors yesterday.
8. The two assessors' opinion was not perverse. It was open to them to reach such conclusion on the evidence.
9. As far as the offence of rape was concerned, both the complainant and the accused, on the sworn evidence given, adopted different position on the first element of rape, that is, the accused's penis penetrating the complainant's vagina, at the material time. The complainant said, the accused penetrated her vagina with his penis, at the material time. The accused, on the other hand, denied the above. The scale of justice, at this point, was evenly balanced.
10. It was the doctor's (PW4) evidence that created a reasonable doubt. Doctor Viniana Madanavosa (PW4) was called to medically examine the complainant on 11 March 2014 – 3 days after the alleged rape. PW4 said she saw the complainant at Nausori Maternity Unit on

11 March 2014. She said, the complainant told her on 11 March 2014 that the accused's penis did not penetrate her vagina at the material time. She said, the complainant also told her that the accused did not touch her, and did not have any sexual contact with her. As a result of the above, PW4 said, she did not medically examine the complainant's vagina. PW4 submitted her medical report as Prosecution Exhibit No. 2.

11. The doctor's evidence had made me cast a critical eye at the accused' alleged confession, to the point of giving it less weight and value.
12. I have considered all the evidence and I have come to accept Assessor No. 1 and 2's opinions that the accused is not guilty as charged. There was a reasonable doubt on the prosecution's case, given the doctor's evidence. The benefit of that doubt must go to the accused. I therefore find the accused not guilty as charged, and acquit him accordingly.




Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Nausori
Solicitor for Accused : Legal Aid Commission, Nausori